

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK L. SCHEIB
and
PEGGY M. GARRETT

Application No. 09/824,276

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on August 10, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On March 15, 2004, appellants filed a Reply Brief. However, there is no indication on the record whether or not the examiner has responded to the Reply Brief. Section 1208.03 of the Manual of Patent Examining Procedure (7th ed., July 1998) states:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer. . . . The primary must then either: (A) acknowledge receipt and entry of the reply brief by

using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02.

In addition, on February 24, 2003, appellants filed an amendment to amend claims 11, 13-15, 16, 19 and 20, and to add new claims 21-28. However, in the examiner's Final rejection mailed on May 21, 2003, the examiner rejects only claims 11, 13-16 and 19-27 under 35 U.S.C. § 103(a) as being unpatentable over Reynolds et al. (hereinafter "Reynolds"). Moreover, in appellants' Notice of Appeal filed on August 21, 2003, appellants appeal claims 11, 13-16 and 19-27. Finally, on page 2, section (10) of the Examiner's Answer mailed on January 13, 2004, the examiner states "[c]laims 11, 13-16, and 19-28 were rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 7." Therefore, it is not clear from the record whether or not the examiner is rejecting claim 28 on appeal. Clarification is required.

Accordingly, it is

ORDERED that the application is returned to the examiner to: (1) properly respond to appellants' Reply Brief filed on March 15, 2004; (2) clarify in writing the status of claim 28 on appeal; and (3) for such further action as may be appropriate.

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RA04-0788